

Tribal Sovereign Immunity – Safe Haven for Criminal and Indecent Behavior

by Elaine Willman

Congressional and judicial shelter of criminal conduct on Indian reservations is reaching an outrageous level. It is happening daily across the country and is getting no or slight local media coverage. It is receiving even less attention from elected officials. The problem is creating a growing resentment for “special preferences” and worse, contributing to an increase of illegal immigration and domestic terrorism.

The 9th Circuit, on January 7th, found that it was permissible on January 1, 1996 for a Gila River Indian Community tribal employee in Arizona to put a gun to a tourist couple’s heads, terrorize them for three hours, threaten destruction of their dogs and property, because “Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.” This couple’s crime was to stop their car on the reservation to walk their dogs. A citation for trespass against this terrorized non-Indian couple had been immediately dismissed even by the Gila River tribe, but the tribal employee’s conduct – well, too bad. Kings X – Indian Sovereign Immunity – Olly-Olly-Oxen-Free.

On January 4th the 9th Circuit ruled on a case of tribal employee welfare fraud allegations. Three Bishop Paiute Tribal casino employees were allegedly collecting welfare for over two years while full-time employed, a matter upsetting to Inyo County, California Prosecuting Attorney and County Sheriff. The court ruled that execution of a search warrant and seizing of casino personnel records when the Tribe had refused to cooperate, violated the Bishop Paiute Tribe’s sovereign immunity. No matter that evidence collected provided suspicion of welfare fraud for six additional employees. The tribe’s sovereign immunity had been violated so the welfare scammers skate and the tribe gets to collect damages from Inyo County. What a great signal this sends to tribal employees across the nation. Kings X – Indian Sovereign Immunity – Olly-Olly-Oxen-Free!

Off, but near the Yakama Reservation, on January 16th, two Yakama tribal members recently shot an elk in the vicinity of a state operated Nile Valley Elk Feeding Station. Imagine the hell that would befall any other off-season, unlicensed hunter. The feeding station benefits elk in the winter and discourages elk from damaging adjacent farmlands. Tribal members however, finding it unnecessary to give a feeding elk even a running start, helped themselves to this “road kill” assisted by the State of Washington’s generous feeding station expense. Yakama Tribal leaders, who passed their own Tribal resolution banning this practice in 1996, decided that the tribal members were simply killing the elk for an anticipated tribal funeral, an accepted practice. So hey, party on at the funeral, fellas – the Elk is courtesy of the State of Washington taxpayer, and on your conscience. Yakima County and State of Washington can take no enforcement action, because of “Indian Sovereign Immunity” Kings X again.

Indian Country Today newspaper reported on January 1, 2002 that the Rosebud Sioux Tribe in South Dakota is “embroiled in a financial mess.” It seems that some \$2.3 million in federal monies is unaccounted for in a mere three-month spending period, August through October of 2001.

Then in New York there’s the entrepreneurialism of the Mohawk Tribe. They were busted in 1999 for smuggling drugs, guns and illegal aliens (300 to 500 a month for years) into this country, including associates of Osama Bin Laden at \$47,000 a head. A couple of years previous to that they were busted for smuggling \$700 million worth of tax exempt cigarettes, and in 1990 they engaged in an armed standoff with New York State Police over illegal gambling activities. Their reservation once

touted billboards posted on their borders stating NO FBI, NO Department of Taxation, No Sheriffs, No New York State Police Allowed. The signs were removed in 2001 due to low casino turnout. Ah, the joys of Indian Sovereign Immunity.

And speaking of gaming, let's do a reality check on economic violence occurring across the nation's map during a difficult recession. We're supposed to believe that these casinos are a positive impact on local economies and great for Indian self-sufficiency. Do you just suppose that all that "disposable income" previously spent in local communities and small businesses, and now diddled away into Indian casino slots, is not a problem for local adjacent communities? Certainly gambling addictions have no impact on already low-income households across the land. And of course, individual enrolled tribal member households are directly benefiting from their tribe's casino...I don't think so. Gambling addiction and family values are a marriage made in hell. But hey, whatever we can do to support that good ol' Indian Sovereign Immunity.

The problem is not Native Americans. The real violence is fueled by Federal Indian Policy, special funding preferences, special congressional and judicial protections that shelter violent behavior upon others, fraud, theft, harassment of fellow citizens, inhumane treatment of animals, and a bottomless pit drainage on the national economy called gambling that sucks "disposable" income out of economically fragile households and communities.

My own mother and grandmother were enrolled Cherokee, as I could also be. I prefer to be a U.S. citizen on equal footing with all other U.S. citizens. For so long as Indian "sovereign immunity" exists for tribal governments and enrolled members, there's no such thing as equal footing in this country. An exploding passel of mayhem, just lightly touched on herein — such unlawful and indecent behavior against fellow U.S. citizens — gets a free pass. Thank you, Congress and our Courts.

Most citizens of Native American ancestry are not enrolled members of tribal governments. Most Native American descendants play by the same rules we all do. Indian sovereign immunity for tribal governments, however, is the double-edged sword that is perpetuating demeaning and disgraceful conduct among enrolled tribal members who, lacking such legal shelter, would better represent their ancestors. I hope Congress encourages them to start, soon.

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